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Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

In the Matter of the Suspension of
Christopher Emanuel Haigh, Petitioner,
from the Practice of Law in Indiana

ON PETITION FOR A WRIT OF CERTIORARI
TO THE INDIANA SUPREME COURT

PETITION FOR A WRIT OF CERTIORARI

Christopher Emanuel Haigh
2000 Lincoln Park West #1203
Chicago, IL 60614
312-242-1685

Questions Presented for Review

1.) Whether Petitioner was denied due process when the Indiana Supreme Court found clear and convincing evidence that Petitioner committed "criminal acts," yet four state investigative agencies failed to find probable cause of the alleged criminal acts.

2.) Whether Petitioner was denied due process when the executive director of the Indiana Supreme Court Disciplinary Commission failed to inform the Indiana Supreme Court of the existence of a potential conflict of interest, namely, that a complaining party and testifying witness was his colleague.

Parties to the Proceedings

Donald R. Lundberg
Indiana Supreme Court Disciplinary Commission
115 W. Washington St.
Suite 1165 ▫ South Tower
Indianapolis, IN 46204

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Constitutions

U.S. Const., Fifth Amendment

The Fifth Amendment reads in pertinent part, "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger."

U.S. Const., Fourteenth Amendment, Section 1.

Section 1 of the Fourteenth Amendment reads in pertinent part, "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Rules

Indiana Supreme Court Admission and Discipline Rule 23, Section 1, reads in part that the purposes of the Commission include "to protect attorneys from unwarranted claims of misconduct"

Appendixes

Appendix A: Report received by Petitioner from the Illinois Department of Children and Protective Services, dated November 11, 2004.

Appendix B: Petitioner's timeline of the relevant facts as they relate to this matter and the disciplinary charges below.

Appendix C: Indiana Supreme Court Order Finding Misconduct and Imposing Discipline tendered by the Indiana Supreme Court on June 30, 2008.

STATEMENT OF THE CASE

This case relates to attorney discipline imposed on Petitioner based on alleged criminal conduct that was never prosecuted, never charged, and indeed was reviewed and dismissed as "unfounded" by a state

investigative agency. Moreover, none of the alleged activity related to clients of Petitioner's or to Petitioner's practice as an attorney.

Indeed, it was Petitioner's position during disciplinary proceedings that regardless of whether the allegations were true or not, four state agencies failed to find probable cause of a crime, and a nexus between the practice of law and the alleged conduct with non-clients was even more tenuous. One state agency went so far as to provide a written determination, "After a thorough evaluation, we have determined the report to be 'unfounded.' This means that credible evidence ... has not been found." Illinois Department of Children and Family Services Report, dated November 11, 2004, attached hereto as Appendix A.

In what would become a bizarre, but significant factor, one of the chief witnesses against Petitioner was a colleague of the executive director of the Indiana

Supreme Court Disciplinary Commission, and was simultaneously engaged in (ultimately unsuccessful) civil litigation with the Petitioner. Yet not once did the executive director disclose his potential bias to the Indiana Supreme Court, nor did he recuse himself from the Petitioner's disciplinary matter.

For the reasons cited herein, the Supreme Court's ruling imposing discipline, as well as the actions of the Indiana Supreme Court Disciplinary Commission, constituted violations of Petitioner's due process rights.

In an effort to clarify the relevant facts and not burden this Court with the salacious, but ultimately irrelevant allegations, Petitioner has provided a timeline in Appendix B.

Jurisdiction

The Indiana Supreme Court tendered its Order Finding Misconduct and Imposing Discipline on June 30, 2008. A copy of the Order is attached hereto as Appendix C.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

ARGUMENT

Petitioner was denied due process when the Indiana Supreme Court ignored state agency determinations that no probable cause of a crime existed, and instead found *clear and convincing* evidence of criminal conduct. Moreover, Petitioner was denied due process when the Indiana Supreme Court Disciplinary Commission executive director, whose responsibilities include "to protect attorneys from unwarranted claims of misconduct,"[1] failed to disclose his pre-existing relationship with a chief witness testifying against Petitioner.

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1 According to Indiana Supreme Court Admission and Discipline Rule 23, Section 1, the broad purposes of the Commission include "to protect attorneys from unwarranted claims of misconduct"

I. Review is Warranted Because Petitioner was Denied Due Process When The Indiana Supreme Court Ruled Clear and Convincing Evidence of a Crime Existed

A. Petitioner was Denied Due Process when the Opinion Ruled, for the First Time, Petitioner Committed a Crime

This Court has long held that due process considerations are basic tenets in criminal law. *See, e.g., In re Winship*, 397 U. S. 358, 362 (1970) ("This notion [that the government must prove the elements of a criminal case beyond a reasonable doubt]—basic in our law and rightly one of the boasts of a free society—is a requirement and a safeguard of due process of law in the historic, procedural content of 'due process.'")

(quoting *Leland v. Oregon*, 343 U. S. 790, 802–803 (1952) (Frankfurter, J., dissenting)).

Furthermore, the government's ability to accuse a person of a crime is limited by the Fifth Amendment to the Constitution. "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; . . . ." U. S. Const., Amdt. 5. *See also United States v. Calandra*, 414 U. S. 338, 343 (1974).

Although this Court has declined to extend the requirement of a grand jury indictment to state governments under the Fourteenth Amendment, it has maintained that state governments must still certify at least "to the probable guilt of the defendant." *Hurtado v. California*, 110 U. S. 516, 538 (1884).

Moreover, this Court has held that the liberty secured by the Fourteenth Amendment is significantly broader than mere freedom from physical constraint. Justices Stevens and Blackmun have opined that liberty secured by the Fourteenth Amendment

> surely includes the right to make basic decisions about the future; to participate in community affairs; to take advantage of employment opportunities; to cultivate family, business, and social relationships; and to travel from place to place.
>
> ...
>
> The initiation of a criminal prosecution, regardless of whether it prompts an arrest, immediately produces "a wrenching disruption of everyday life." *Young v. United States ex rel. Vuitton et Fils*, 481 U.S. 787, 814 (1987). Every prosecution, like every arrest, "is a public act that may seriously interfere with the defendant's liberty, whether he is free on bail or not, and that may disrupt his employment, drain his financial resources, curtail his associations, subject him to public obloquy, and create anxiety in him, his family and his friends." *United States v. Marion*, 404 U.S. 307, 320 (1971). In short, an official accusation of serious crime has a direct impact on a

> range of identified liberty interests. That impact, moreover, is of sufficient magnitude to qualify as a deprivation of liberty meriting constitutional protection.

Albright v. Oliver, 510 U.S. 266 (1994) (Stevens, J. and Blackmun, J. dissenting).

In the present action, both the Indiana Supreme Court Disciplinary Commission and the Indiana Supreme Court have accused, and even ruled, that Haigh committed crimes. Yet the very state agencies set up to determine whether there was even probable cause of a crime have found differently.

As a direct result of the State's actions, Petitioner's liberties have been deprived. In particular, Petitioner has been found "guilty" of crimes that did not even meet the probable cause test of fact-finding agencies. Just as in *Albright*, Petitioner's deprivations include (at a minimum) disrupting Petitioner's employment, draining his financial resources, curtailing his associations, subjecting him to public

obloquy, and creating anxiety in him, his family and his friends. For all of these reasons, the State's opinion that Haigh committed crimes violated Petitioner's due process rights.

B. Petitioner was Denied Due Process when the Court Found "Clear and Convincing" Evidence of Misconduct

Petitioner's due process rights were also violated when the Indiana Supreme Court found "clear and convincing evidence" of misconduct, ignoring the fact that state investigative agencies failed to find even probable cause of the same charges.

In professional misconduct proceedings, the Indiana Supreme Court has ruled that the evidence of misconduct must meet a higher standard than probable cause: that of clear and convincing evidence. *See In Re Goebel*, 703 N.B.2d 1045 (Ind. 1998). Given that four state investigative agencies could not even find

probable cause, it is contrary to due process that the Supreme Court found "clear and convincing" evidence of wrongdoing.

For this additional reason, Petitioner was deprived his due process rights.

II. Review is Warranted Because The Petitioner was Denied Due Process when the Disciplinary Commission Failed to Disclose a Pre-existing Relationship with a Chief Witness

The Indiana Supreme Court Disciplinary Commission (the "Commission") itself also violated due process when it failed to fully inform the Indiana Supreme Court of a potential bias – resulting in the appearance of impropriety.

The Executive Director of the Commission, Donald Lundberg, oversaw every aspect of Petitioner's investigation and disciplinary proceedings without disclosing his relationship with a chief witness and

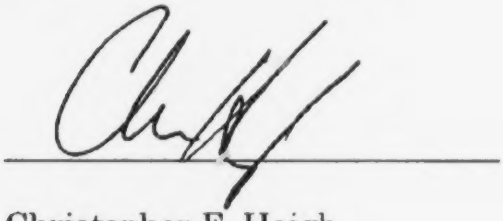
colleague, Kenneth Crews, to the Indiana Supreme Court. This fact alone warrants review of the Petitioner's disciplinary proceedings.

However, yet a second named witness for the Commission – a former employee of the Commission – had identical if not more egregious charges brought against him at nearly the same time as Petitioner. Not only did the Commission fail to investigate or act on such charges, it listed its former employee as a potential witness against Petitioner. For both of these reasons, the Commission's investigation and the disciplinary proceedings were in violation of Petitioner's due process rights.

Conclusion

For the foregoing reasons, petitioner prays that this Court grant certiorari to review the order finding misconduct and imposing discipline tendered by the Indiana Supreme Court on 30 June 2008.

Respectfully submitted,



Christopher E. Haigh

Appendix A: Letter from Illinois Department of Children and Family Services

DCFS
Illinois Department of Children and Family Services

Investigation of Suspected Child Abuse or Neglect – Unfounded

November 11, 2004

Christopher Haigh
505 N. Lake Shore Drive Apt. 3103
Chicago, IL 60611

Dear Mr. Haigh,

RE: SCR# - 1605168 – A
Name – Haigh, Christopher

You were previously notified that this Department was investigating a report of suspected child abuse or neglect in fulfillment of its responsibilities under law.

After a thorough evaluation, we have determined the report to be "unfounded." This means that credible evidence of child abuse or neglect has not been found.

The Abused and Neglected Child Reporting Act permits you to request that a report that was falsely filed be retained by the Department. If you believe that the report was falsely filed, you must within ten (10) days request in writing that the report be retained.

The request must be submitted to the State Central

Register, 406 E. Monroe Street, Springfield, Illinois 62701, postmarked within ten (10) days of the date of this letter. If such written request is not received in accordance with the prescribed procedures, the information identifying you and all other persons named in the report will be removed from the State Central Register and destroyed.

Thank you for your cooperation in this investigation. If you have any questions, please write me at the address below.

Sincerely,

Linda Everette-Williams, Administrator
State Central Register

Appendix B: Relevant Timeline

Date	Event
February 2001 - April 16, 2004	While Haigh is employed at Barnes & Thornburg as a full-time intellectual property associate, he volunteers as a part-time, unpaid rowing coach at the International School of Indiana.
March 2004	Haigh interviews at the Chicago law firm of Baniak Pine & Gannon and is ultimately hired by the firm.
On or before April 5, 2004	Haigh announces his resignation from the coaching position to all rowers and appoints the existing assistant coach as his replacement. A second coach is also engaged to assist.
April 5, 2004	"AB" sends an e-mail to Haigh acknowledging his departure and discussing her fluctuating (but non-intimate) relationship with Haigh over the years.
April 20 - 26, 2004	Haigh moves to Chicago and begins employment as an associate of Baniak Pine & Gannon.
May 17, 2004	Haigh forwards an e-mail to the School's headmaster, the original being authored by AB (also known as "Daughter Doe"). Haigh asserts (correctly) that there is no inappropriate relationship with AB. This e-mail appears to eventually be later relied upon by the Supreme Court as "evidence" of Haigh's dishonesty.

June 19, 2004	AB sends an e-mail to Haigh acknowledging Haigh's request that AB "back off."
June 21-25, 2004	Haigh attends a rowing camp *as a fellow rower* with AB and "CD" (identified herein as Veronica Crews or "Veronica" due to her willingness to be named and her publicly available affidavit). The rowing camp was not a school-sponsored event and was staffed by third party (paid) rowing coaches – none of which included Haigh.
August 2004	AB befriends Haigh's ex-girlfriend, Julie Stephenson, who was age 48 at the time, and professes to have similar feelings of loss due to Haigh's move to Chicago.
August 2004	AB tells Stephenson that AB had a physical relationship with Haigh during and/or after the time of the rowing camp. The alleged events purportedly happened while Veronica was in the room.
August 2004	Stephenson contacts AB's mother. Law enforcement and/or investigative agencies in four states, including West Virginia, Michigan, Indiana, and Illinois, are contacted.
On or about September 2004	AB writes a journal entry absolving Haigh of any wrong doing and purportedly retracting anything said to Stephenson.
November 11, 2004	Illinois determines that the report it received was "unfounded." All other

	states decline to bring charges.
June 30, 2005	Veronica's father, Kenneth Crews ("Crews") hires counsel (and a former federal prosecutor), Linda Pence, who pays a surprise visit to Haigh and Haigh's superiors at his law firm. Despite Haigh's assertion that she is not welcome and he was represented by counsel, Pence persists with her visit.
July 2005	On advice from his peers and superiors, Haigh files a disciplinary grievance against Pence.
July 9, 2005	Veronica leaves her home and begins as a student at Northwestern University, obtaining dormitory housing.
July 2005 – Spring 2008	Haigh co-signs all of Veronica's school loans since Crews refused and Veronica would not otherwise be able to attend school.
July 2005	Crews, furious that Veronica was attending Northwestern University and that Veronica left without Crews' permission, contacts various administrators at Northwestern University in an attempt to have Veronica expelled. Crews cites, among other things, the purported "medical issues" of Veronica. Veronica never had medical issues. Crews also improperly obtains Veronica's campus address and the administration offers to relocate Veronica to a new dorm.
August 11,	Crews writes to Northwestern

2005	University's Director of Financial Aid, requesting that Veronica be denied financial assistance due to "critical personal and medical issues." His wife writes to Purdue administrators citing similar (but false) medical issues.
September 2005	Pence responds to Haigh's disciplinary grievance with over 2000 pages of what she alleges to be e-mails and allegations related to Haigh. Many are later shown to be false allegations, unrelated e-mails and/or misstatements by Pence. Pence goes so far as to include (completely false) allegations that Haigh has a sexually transmitted disease.
October 3, 2005	The Disciplinary Commission commences an investigation of Haigh. The investigation of Pence is eventually terminated without further review.
October 2005 – June 2008	Crews' colleague and fellow professor of law, Donald Lundberg, oversees the investigation of Haigh. Lundberg fails to tell Haigh or the Indiana Supreme Court of this relationship.
February 28, 2006	Pence, on behalf of her clients (the "Civil Plaintiffs") files a civil action against Haigh in the Marion County Superior Court, cause number 49D13-0602-CT-008125 (the "Marion County Action").
August 13, 2007	Haigh brings a Verified Complaint against Crews and Pence in the Northern District of Illinois, cause number 07 C 4561 (the "District Court

	Action"). The Verified Complaint is supported by an affidavit from Veronica.
August 14, 2007	All parties to both actions settle their disputes.
January 14, 2008	The Hearing Officer appointed by the Indiana Supreme Court tenders his opinion that Haigh should be suspended for six months. Both Haigh and the Disciplinary Commission request reconsideration.
June 30, 2008	The Indiana Supreme Court finds Haigh committed misconduct and imposes discipline of a two-year suspension. The Court bases its finding on alleged "commission of criminal acts" and "engaging in conduct involving dishonesty, fraud, deceit and misrepresentation."

Appendix C: Indiana Supreme Court Order

In the Indiana Supreme Court
In the Matter of Christopher E. Haigh, Respondent

Supreme Court Cause No. 98S00-0608-DI-317

Entered: June 30, 2008

Upon review of the report of the hearing officer appointed by this Court to hear evidence on the Indiana Supreme Court Disciplinary Commission's "Verified Complaint for Disciplinary Action," and the briefs of the parties, the Court finds that the Respondent engaged in professional misconduct and imposes discipline on Respondent.

Facts: Based in large part on "Stipulations of Fact" submitted by the parties, the hearing officer appointed in this case, Leslie C. Shively, made the following findings of fact.

While Respondent was a volunteer coach of a crew team at a school in Indianapolis, he became sexually intimate with two female crew team members while they were still minors" AB" and her close friend, "CD."

In June 2004, while attending a crew camp in West Virginia, Respondent gave AB, then 16, and CD, then 17, wine to drink, and he engaged in sexual conduct with AB. Later, Respondent took AB and other team members to Michigan, where he had intercourse with AB. In early August 2004, AB visited Respondent in Chicago, where he had moved, and they engaged in

sexual conduct. In August 2004, Respondent began a sexual relationship with CD, which continued in secret through the next summer, at which point CD moved in with Respondent in Chicago. Respondent continued to furnish liquor to her although she was not yet 21 years old.

During the relevant time period, Respondent repeatedly assured CD's parents, AB's mother, the school, and others that he had no inappropriate relationship with AB or CD. Respondent denies that he has done anything improper or unethical.

Violations: Respondent is charged with violating these Indiana Professional Conduct Rules prohibiting the following misconduct:
8A(b): Commission of criminal acts that reflects adversely on a lawyer's honesty, trustworthiness or fitness as a lawyer in other respects.
8A(c): Engaging in conduct involving dishonesty, fraud, deceit or misrepresentation.

The Commission charged that Respondent's sexual conduct with and furnishing liquor to AB and CD violated federal criminal law and the criminal laws of West Virginia, Michigan, and Illinois. The hearing officer concluded Respondent violated the laws of West Virginia and Illinois prohibiting furnishing liquor to a minor and the law of West Virginia prohibiting sexual conduct with a child under 18 by a "custodian." See W.Va. Code § 61-8D-5(a). The hearing officer concluded there was insufficient evidence of all the elements of the other offenses, although the hearing officer's findings arguably would support a conclusion that Respondent committed these offenses.

Regardless of whether Respondent committed all of the alleged criminal violations, we conclude he committed, at the very least, the violations found by the hearing officer and that these violations reflect adversely on his honesty, trustworthiness, and fitness as a lawyer. We agree with the hearing officer that there is clear and convincing evidence that Respondent engaged in conduct involving dishonesty, fraud, deceit and misrepresentation. We therefore conclude that Respondent violated the Professional Conduct Rules as charged.

Discipline: For Respondent's professional misconduct, the Court suspends Respondent from the practice of law in this state for a period of at least two years beginning August 15, 2008. Respondent shall not undertake any new legal matters between service of this order and the effective date of the suspension, and Respondent shall fulfill all the duties of a suspended attorney under Admission and Discipline Rule 23(26). At the conclusion of that period, Respondent may, upon fulfillment of the duties of a suspended attorney and full payment of the costs of this proceeding, seek reinstatement, which may in this Court's discretion be granted if Respondent demonstrates by clear and convincing evidence that he satisfies each of the requirements of Admission and Discipline Rule 23(4)(b).

The costs of this proceeding are assessed against Respondent. The hearing officer appointed in this case is discharged.

The Clerk of this Court is directed to give notice of this order to the hearing officer, to the parties or

their respective attorneys, and to all other entities entitled to notice under Admission and Discipline Rule 23(3)(d).

DONE at Indianapolis, Indiana, this 30th day of June, 2008.

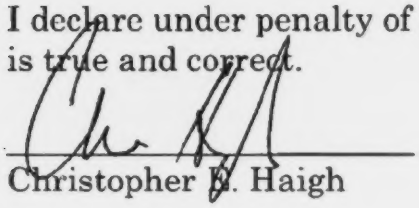
Randall T. Shepard
Chief Justice of Indiana

All Justices concur.

Certificate of Compliance

As required by Supreme Court Rule 33.1(h), I certify that the petition for a writ of certiorari contains 2924 words, excluding parts of the petition that are exempted by Supreme Court Rule 33.1(d).

I declare under penalty of perjury that the foregoing is true and correct.



Christopher E. Haigh